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DISCIPLINARY ACTIONS UNDER THE EGYPTIAN CIVIL SERVICE LEGAL SYSTEM: A CONSTITUTIONAL AND ADMINISTRATIVE LAW PERSPECTIVE

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I. INTRODUCTION

The bilateral judicial system has been established firmly within the Egyptian legal system. Various administrative law courts of the Council of the State (the "Council") are now entrusted with resolving all administrative law disputes[1] arising out of government activities. The Council has gained its judicial power over administrative law disputes gradually and through constant and steady developments.[2] The Judicial Division of the

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The views expressed in this article are, however, only my views, not necessarily theirs.

1. These disputes should be distinguished from business-like activities of the State. In addition, acts of state are not within the scope of administrative law disputes. Acts of state are shaped with political considerations. They are, therefore, precluded from judicial review. *See infra* text accompanying note 13.

2. The Council of the State was established in 1946. Its jurisdiction was very limited. Its judicial structure was confined only to one administrative court. *See infra* text accompanying notes 8, 11.

Council has become an equivalent counterpart to the judicial pyramid of the ordinary courts. The Council, through its different levels of courts and its other organs,[3] attempts to strike a clear demarcation between administrative law activities of the government and its business activities. Distinction between these activities is a fundamental question of administrative law in a bilateral judicial system. Settling this question may eliminate jurisdictional conflicts between ordinary and administrative law courts. It may lay down principles of law that are peculiar to administrative law disputes. Formulating a firm solution for this conundrum has never been a complete success or an easy task.[4] The High Court[5] was established to deal with anticipated questions of jurisdictional conflict.

The main emphasis of this article is civil servants' disciplinary actions under the Egyptian legal system. The Civil servants' activities are connected with public utilities. Heads of public utilities direct civil servants to maintain good services. Multifarious regulatory authorities with overlapping jurisdictions are established to improve the standard of public services. Some important examples of those authorities are the Central Agency for Management and Administration, the States Delegate Office, the Administrative Deputy Agency, and the Civil Service Affairs Central Committee.

The Egyptian disciplinary legal system has undergone a thorough legislative review to eliminate inefficiency and to maintain job security.[6] It has shifted from a purely administrative system to an elaborate, almost judicial, disciplinary system. Disciplinary courts within the Council have become disciplinary authorities that are empowered to impose penalties on civil service employees. These courts and the High Administrative Court are also authorized to review disciplinary decisions made by administrative authorities. Nevertheless, these disciplinary courts have no jurisdiction over adverse acts of public administration other than strict disciplinary actions. The former actions are within the purview of the administrative judicial court and other administrative courts.[7]

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3. Council of the State Act, No. 47, art. 2 (1972) (Egypt).

4. *See* MUSTAFA WASFI, ADMINISTRATIVE PROCEDURAL RULES 1-66 (2nd ed. 1972); *see also infra* text accompanying notes 12-15.

5. This court is a constitutional court and a Court of Conflict. It is completely separate from ordinary courts and administrative law courts. It is wholly different from the High Administrative Court, which sits at the top of the administrative law courts pyramid. *See infra* text accompanying notes 30, 63.

6. *See generally* SULYMAN TAMAWI, DISCIPLINARY OFFENSES: A COMPARATIVE STUDY (1975).

7. Council of the State Act, *supra* note 3, arts. 13-15.

Although the disciplinary legal system has been improved, its framework is far from stable. Certain improvements are needed to foster job security. Cases involving serious disciplinary penalties merit further consideration. Furthermore, since efficiency is the primary goal of a rational disciplinary system, public authorities should not be hindered by formality and complexity.

This Article analyzes principal disciplinary issues of general concern. It moves from a theoretical discussion to a close examination of practical disciplinary disputes argued before the judicial division of the Council.

Section II views the administrative law courts and their role from a constitutional perspective. The types, procedures, and jurisdictions of disciplinary courts are explored. Administrative law disputes are explained. Distinction is made between these activities and other government activities in light of the prevailing administrative law theory. The bilateral judicial system is then evaluated. Reference is made to other bilateral legal systems, including the French administrative law experiment. A comparison is made between bilateral and unitary legal systems.

Section III addresses the duties, responsibilities, official offenses, and disciplinary penalties of civil servants. This section also deals with civil service regulatory authorities and their diverse duties and interrelated roles. An assessment is made at the end of the section.

Section IV examines disciplinary law cases in light of court decisions. The judicial disciplinary policy followed by the High Administrative Court is explored in light of legislative mandates, which are undergoing constant change.

This Article concludes that drastic shifts toward a purely judicial disciplinary system may be at the expense of efficiency and flexibility of good administration. Administrative authorities should not be deprived of their supervisory role over subordinate officials. At the same time, a subordinate official is also entitled to further protection. Abuse of discretion must not be allowed.

II. THE COUNCIL OF THE STATE APPARATUS AND ITS ROLE: A CONSTITUTIONAL OUTLOOK

Egypt has had a bilateral judicial system since 1946.[8] Ordinary courts of justice[9] have jurisdiction over private and civil litigation, including

8. Council of the State Act, No. 112 (1946) (Egypt).

9. Ordinary Courts of justice include: Conciliation Courts, Courts of First Instance (District Courts), Appellate Courts, and the Court of Cassation. The Court of Cassation sits at the top of the ordinary judicial pyramid as the highest ordinary court.

government business.[10] The Council, however, has become the sole arbiter with respect to acts of public administration, which are carried out by public administration authorities acting in their capacities as public powers.[11]

An act of public administration may be characterized as an administrative act, and not as a private governmental one, if it satisfies certain conditions. For example, it must be carried out by the executive branch of the state, but not in its political or governmental capacity. Thus, government dealings with foreign countries concerning diplomatic or military activities, or its relationship with the legislature with respect to legislative processes, are beyond the domain of administrative activities.[12] Such acts are shaped with political considerations. Therefore, the government acts in a political rather than in an administrative capacity.[13] Government activities of this nature are called "acts of state." Consequently, they are not within the purview of administrative law courts.[14] In

10. Private and civil litigation includes all disputes involving private individuals, which may arise as a result of their dealings with each other. The terms also embrace disputes involving public administration, which may arise as a result of the activities with private individuals and companies when a public authority chooses to act, or is required to act, in a business-like capacity. Public administration in such dealings stands as a private actor, and the other party to such activity is equal to public administration in rights and obligations. Private law activities are discharged by equal parties and without any regard to their official status. Disputes arising out of such activities are, accordingly, solved by ordinary courts in countries that follow a bilateral judicial system. *See* WASFI, *supra* note 4, at 86-91.

11. When the Council was established in 1946, it consisted of only a judicial administration court, which had a very limited jurisdiction. In 1952, Judicial Committees were established within the Council. In 1954, these committees were replaced by administrative courts, which also had a very limited jurisdiction. In 1955, the jurisdiction of the Council expanded and the High Administrative Court was established. The Council's jurisdiction over administrative law disputes, however, was not complete. The Council has steadily evolved. Today, it has become the sole judge in all administrative acts of public administration. *See* TU'AYMAH AL-JARF, ADMINISTRATIVE JUDICIAL REVIEW OF PUBLIC ADMINISTRATION ACTION, 5-20, 31-95 (1977); *see infra* text accompanying notes 19-63.

12. In Egypt, the most compelling political acts of the Executive are not within the jurisdiction of ordinary courts.

13. In America, courts of justice do not review political questions. Marbury v. Madison, 1 Cr. 137, 170 (1803). Chief Justice Marshall declared: "Questions in their nature political, or which are, by the Constitution and Laws, submitted to the Executive, can never be made in this Court." *Id.*; *see* Luther v. Borden, 48 U.S. 1 (1849); Coleman v. Miller, 307 U.S. 433 (1939); Woods v. Miller, 333 U.S. 138 (1948); PAUL M. BATOR ET AL., HART & WECHSLER'S: THE FEDERAL COURTS AND THE FEDERAL SYSTEM, 220-94 (3rd ed. 1988); GERALD GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW (9th ed. 1975); C.G. POST, THE SUPREME COURT AND POLITICAL QUESTIONS (1936); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION ON THE CONSTITUTION OF THE U.S. (1987); LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW (2nd ed. 1988).

14. *See infra* text accompanying notes 22-26.

addition, the act must be closely connected with public utilities. Acts of public administration that do not meet this condition are considered private acts of public administration.[15] Lastly, the act must be carried out by the public administration in its capacity as a public power. In its capacity it must be distinguished from the other party dealing with it. In such activities the administration is equipped with certain powers and becomes superior. It can impose its will or certain obligations upon the other party for maintaining public services. But, if the public administration was not privileged with certain powers, or if it chooses to deal with individuals in a businesslike method, its act is considered a private act that lies within the jurisdictional province of ordinary courts, even though it is closely related to public services.[16]

The bilateral judicial system has been completely integrated into the Egyptian legal system. Subsequent constitutions have provided that the Council is an independent judicial agency, which is authorized to resolve administrative disputes of public administration.[17] Based upon such constitutional mandates, subsequent acts have expanded the jurisdiction of the Council.[18] The Council performs judicial, legislative, and consultative functions. In order to fulfill its duties, the Council is divided into three major divisions: the Judicial Division, the Legal Opinion Division, and the Legislative Division.[19]

A. The Judicial Division of the Council

The Council discharges its judicial function through the High Administrative Court, the Judicial Administrative Court, administrative courts, disciplinary courts, and the state delegates office.[20]

In accordance with the constitutional provision that established the Council as an independent judicial agency,[21] the Council of the State Act of 1972 conferred on the Council exclusive jurisdiction to review all public

15. *See supra* note 10; *see supra* text accompanying note 12.

16. For more details see WASFI, *supra* note 4; AL-JARF, *supra* note 11.

17. 1980 CONST. OF THE ARAB REPUBLIC OF EGYPT art. 192. The article states that "[t]he Council of the State is an independent judicial agency. It is authorized to resolve administrative disputes and disciplinary cases of public administration. The Act of the Council of the State determines the other duties of the Council." *Id.*

18. Council of the State Act, *supra* note 3, art. 2. It should be noted that this act, with some modifications, is still in force.

19. *Id.*

20. *Id.* art. 3.

21. *See* 1980 CONST. OF THE ARAB REPUBLIC OF EGYPT art. 192, *supra* note 17.

administrative acts, including government contracts, disciplinary cases, public property determinations, and public order and public safety disputes.[22] Accordingly, the Council has absolute jurisdiction to review the validity of acts of public administration as well as the power to entertain compensation claims raised against public administration.

This Act, however, precludes judicial review for certain governmental acts. Legislative provisions that preclude judicial review of certain administrative actions[23] have resulted in fierce battles and numerous opinions. Article 12 of the Council of the State Act of 1959 provides that "[t]he Council has no jurisdiction to entertain disputes related to acts of State." This article then states that "[d]ischarge and dismissal of civil servants by the President of the Republic for reasons other than disciplinary ones are considered as acts of State."

The Council struggled over the effect of this preclusion clause with respect to the scope of judicial review of administrative action and the judicial jurisdiction of the Council.[24] The Council tackled this question with considerable caution and reluctance. The Judicial Administrative Court allowed claims against dismissal by the president, notwithstanding the Act's plain statement that no further judicial review was allowed against such acts. It decided that the complainant was entitled to compensation to redress injuries. Nevertheless, it unequivocally decided that it had no jurisdiction to quash these acts.[25]

The High Administrative Court, however, rejected the opinion of the Judicial Administrative Court. It held that administrative courts are precluded from reviewing such acts. Furthermore, it ascertained that administrative courts cannot entertain or quash compensation claims related to these acts.[26]

The views of Egyptian jurists concerning the preclusion clause is also far from unanimous. Most of them support the attitude of the Judicial Administrative Court and criticize the High Administrative Court's inflexible opinion.[27] Other jurists subscribe to the High Administrative

22. Council of the State Act, *supra* note 3, art. 10.

23. *See supra* text accompanying notes 12-13.

24. *Compare with* 5 U.S.C. § 701(a) (1988), which states that "This chapter applies, according to the provisions thereof, except to the extent that 1. statutes *preclude* judicial review; or 2. agency action is committed to agency discretion by law." *Id.*

25. 8 Judicial Administrative Court, No. 5999 (1956); *see also* AL-JARF, *supra* note 11, at 120.

26. 3 High Administrative Court No. 925 (1958); 10 High Administrative Court No. 1205 (1965).

27. AL-JARF, *supra* note 11, at 102-29.

Court's opinion. The latter prefer to follow the letter of the Act, but not its spirit.[28]

The permanent constitution has resolved the dispute in favor of the principles of natural justice and the prevailing view of the jurists. Article 68 states that "[e]very individual has the right of access to the judiciary. This right is guaranteed. No provision in any Act of Parliament will protect administrative acts of public administration against judicial review."[29]

Accordingly, preclusion provisions are explicitly considered unconstitutional. The Constitutional Court (the High Court) has declared that such legislative enactments are of no legal effect and has annulled them.[30] Any act of public administration made thereunder, will therefore, be held invalid. The Council of the State Act of 1972 does not include the debated paragraph.[31] The High Administrative Court, in its new rulings, has struck down acts of public administration based on provisions similar to the above debated one.[32]

1. The High Administrative Court

The High Administrative Court, which was established in 1955, is located in Cairo.[33] It is the highest appellate administrative court that is authorized to review decisions of the administrative judicial court, administrative courts, and disciplinary courts.[34] The Court reviews these decisions according to a specified procedure.[35]

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28. *See* ALI EL-BAZ, CONSTITUTIONAL REVIEW OF ACTS OF PARLIAMENT IN EGYPT 482-85 (1978). On the question of "the preclusion clause" in the United States of America, *see generally* Kenneth C. Davis, *Administrative Arbitrariness Is Not Always Reviewable*, 51 MINN. L. REV. 642 (1967); Kenneth C. Davis, *No Law To Apply*, 25 SAN DIEGO L. REV. 1 (1988); Ronald M. Levin, *Understanding Unreviewability in Administrative Law*, 74 MINN. L. REV. 689 (1990); Harvey Saferstein, *Nonreviewability: A Functional Analysis Of Committed To Agency Discretion*, 82 HARV. L. REV. 367 (1968).

29. PERMANENT CONST. OF THE ARAB REPUBLIC OF EGYPT art. 68.

30. AL-JARF, *supra* note 11, at 124; EL-BAZ, *supra* note 28, at 482.

31. Article 11 of the named Act states that "courts of the Council have no jurisdiction to review acts of state." Council of the State Act, *supra* note 3, art 11.

32. AL-JARF, *supra* note 11, at 124.

33. Council of the State Act, No.165 (1955) (Egypt).

34. Council of the State Act, *supra* note 3, art. 23.

35. Appeals shall be raised by a person who has a *locus standi*. The administrative attorney general shall be notified. Council of the State Act, *supra* note 3, art. 22. It should be noted that procedural rules followed by the Council are distinct from those followed by the ordinary courts of justice.

2. The Administrative Judicial Court

The Administrative Judicial Court is also located in Cairo.[36] It may hold sessions in other regions of the Republic by its chief's decision.[37] The court has primary jurisdiction over all administrative law cases except for those cases within the jurisdiction of administrative courts or disciplinary courts. It should be remembered that the Administrative Judicial Court is considered, in these cases, a court of first instance. Its decisions can be reviewed, on appeal, by the High Administrative Court.[38] The Administrative Judiciary Court also has appellate jurisdiction for decisions of administrative courts.[39]

3. Administrative Courts

Administrative courts are located in Cairo and Alexandria.[40] The president of the Council may establish other administrative courts in any region or regions of the state.[41] An administrative court may be authorized to review administrative disputes concerning a government unit or units as determined by the president of the Council.[42] An administrative court has jurisdiction over a limited number of administrative law cases. It is authorized to entertain claims of public officials of a lesser category[43] questioning decisions of appointments, as well as disputes regarding monthly salary determinations and retirement pensions.[44] It is also authorized to review claims against termination of service and suspension from work in cases not of a disciplinary nature.[45] Furthermore, an administrative court is authorized to solve disputes arising out of concession and public works contracts, but within certain limits.[46]

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36. Council of the State Act, *supra* note 3, art. 4.

37. *Id.* art. 13.

38. Courts' decisions of the Council can be reviewed before the High Administrative Court on one of various grounds: violation of law, substantial procedural defect, or a court decision that contradicts the doctrine of res judicata. *Id.* art. 23.

39. *Id.*

40. *Id.* art. 5.

41. *Id.*

42. *Id.* art. 6.

43. *See infra* text accompanying notes 82-83.

44. Council of the State Act, *supra* note 3, art. 14.

45. *Id.*

46. Council of the State Act, *supra* note 3, art. 14. The article states that an administrative court has jurisdiction to resolve administrative contract disputes only if the value of the claim

4. Disciplinary Courts

Disciplinary courts[47] are specialized courts. They have jurisdiction only over employee disciplinary issues.[48] Disciplinary courts have a dual, but specialized and interwoven role. In certain cases, disciplinary courts are empowered to impose disciplinary penalties upon public officials. In this capacity, they are considered disciplinary authorities. Their decisions may be reviewed, on appeal, before the High Administrative Court. A court's decision may be struck down by the latter court on certain grounds of review.[49] The other role of the disciplinary courts is to review decisions made by disciplinary authorities. In this capacity, a disciplinary court is considered as an appellate avenue. It may quash disciplinary decisions made by administrative authorities on any ground of review of administration action.[50]

Explicit disciplinary decisions are exclusively within the jurisdiction of disciplinary courts. Administrative law disputes other than express disciplinary penalties are within the exclusive province of the other administrative law courts of the Council.[51] Thus, the High Administrative Court ruled that adverse actions against civil servants, other than disciplinary penalties, must be reviewed by the Administrative Judicial Court but not by disciplinary courts. The High Administrative Court ascertained that acts of public administration, such as transfer and reassignment, are not within the competence of disciplinary courts.[52] Although a transfer decision may be used by a superior official as a pretext to punish an innocent official, the Court held that such an act is not within the penalties

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is not more than 500 pounds. *Id.*

47. Disciplinary Courts were established in 1972. *See supra* text accompanying notes 19-21; *see also* Administrative Deputy and Disciplinary Proceedings Act, No. 117, art. 18 (1958) (Egypt). Before the establishment of disciplinary courts, important disciplinary disputes were solved through disciplinary councils which consisted of two members of the Council of the State and two officers chosen from the Accountancy Council or the Civil Service Council. Until 1972, these disciplinary councils were not part of the Judicial Division of the Council or part of the judiciary.

48. Council of the State Act, *supra* note 3, art. 15.

49. *See* Council of the State Act, No. 165 (1955) (Egypt).

50. Grounds of review of administrative action are lack of jurisdiction, violating the law or applying it incorrectly, substantial procedural defect, and abuse of power. Council of the State Act, *supra* note 3, art. 10. *See also* AL-JARF, *supra* note 11, at 234-84.

51. *See supra* text accompanying notes 32-33.

52. 27 High Administrative Court No. 3359 (1983). *See also infra* text accompanying notes 165-72.

stated in the Civil Service Employees Act.[53] The interested official, accordingly, should raise a case before the administrative judicial court and not before the disciplinary courts.

There are two types of disciplinary courts.[54] The first type of disciplinary court has jurisdiction over disciplinary actions involving officials of the highest category.[55] The second type has jurisdiction over disciplinary disputes involving officials of lesser categories.[56]

Both types of courts are independent of each other. Their determinations can be reviewed only by the High Administrative Court. Disciplinary courts for high ranking officials are located in both Cairo and Alexandria.[57] The court's determinations are made by a panel of three judges. Disciplinary courts for lesser officials are also located in Cairo and Alexandria.[58] The president of the Council, however, may establish disciplinary courts in other regions of the country.[59] The president also determines the courts' territorial jurisdictions, their numbers, and the government units that lie within the province of a certain disciplinary court.[60]

However, conflicts between disciplinary courts may arise. A disciplinary case may involve officials from different ranks. In such cases, the dispute must be referred to the concerned disciplinary court authorized to entertain disciplinary disputes involving the high ranking officer.[61] Territorial jurisdiction is determined according to the place where the offense was committed.[62] Similarly, a disciplinary dispute involving officials from different government units shall be resolved by the disciplinary court located in the area in which the offense was committed.[63] Other cases of jurisdictional conflict are resolved by the Council president.[64]

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53. *See infra* text accompanying notes 84, 85.

54. Council of the State Act, *supra* note 3, art. 7. *See also infra* text accompanying notes 81-82. To distinguish between these two types of courts, disciplinary courts for the highest category are sometimes entitled high disciplinary courts. But this title is misleading because both courts are equal in their official status. Their personnel jurisdiction, however, is determined according to officials' ranks.

55. Council of the State Act, *supra* note 3, art. 7.

56. *Id.*

57. *Id.* art. 8.

58. *Id.*

59. *Id.* art. 7.

60. *Id.*

61. *Id.* art. 17.

62. *Id.* art. 18.

63. *Id.*

64. *Id.* arts. 17-18. *See* Administrative Deputy and Disciplinary Proceedings Act, *supra* note

5. The Delegates of the State Office

The Delegates of the State Office are one of the fundamental units within the Judicial Division of the Council. Its legal staff acts on behalf of the state in administrative law cases[65] involving government agencies. Senior officials of this office are usually known as councilors. Councilors, assistant councilors, deputies, and representatives of this office discharge the duties assigned to them by their director. The head of the Office is appointed by the president of the Council and acts as the president's deputy.[66]

B. The Legal Opinion Division

The Legal Opinion Division is another major division of the Council. It consists of various units. Those units are managed by councilors or assistant councilors. They are attached to government units to carry out the duties of the division concerning those units.[67] Councilors of these units are directly accountable before the Council.[68] The Council, through its legal opinion division, has exclusive authority to give opinions with regard to matters related to the interpretation of the Civil Service Employees Act and the application of its rules and principles.[69] The legal opinion must be sought from the unit attached to the concerned ministry. An application to this effect must be made by the concerned ministry through the Central Agency for Management and Administration.[70]

47, art. 24; 1 FAHMI IZZAT, DISCIPLINARY AUTHORITY BETWEEN PUBLIC ADMINISTRATION AND THE COURTS 523 (1st ed. 1980).

65. Disciplinary disputes are excluded from the jurisdiction of this office. In disciplinary cases the government is represented by an administrative attorney or deputy acting within the Administrative Deputy Agency, which is exclusively authorized to investigate and prosecute disciplinary offenses within the civil service. *See* Administrative Deputy and Disciplinary Proceedings Act, *supra* note 47, arts. 3, 4; *see also infra* text accompanying notes 102-8.

66. Council of the State Act, *supra* note 3, art. 7.

67. *Id.* art. 40.

68. *Id.* art. 42.

69. Civil Service Employees Act, No. 47, art. 6 (1978) (Egypt).

70. *Id.* This complex procedure for obtaining legal opinion, it would seem, is intended to maintain the role of the central agency with respect to civil service activities. One also would assume the framers of this provision intended to achieve consistency within the civil service. Nevertheless, these purposes can be achieved without resorting to this long process. The Council may be directly empowered to carry out this duty, and the opinion of the Council may be conveyed, without further channels, to the Central Agency.

The Legal Opinion Division and the Legislative Division have a general board[71] that is headed by one of the deputies of the Council president. The board includes heads of both divisions, their assistants, and heads of their different units. It is authorized to give opinions concerning international, constitutional, legislative, and other legal issues that may be referred to the board by the President of the Republic, the Speaker of the National Assembly, the prime minister, any minister, or the president of the Council.[72] It is also authorized to give opinions concerning disputes that may arise between ministries, public agencies, and local government authorities.[73] The opinion of the general board is authoritative and binding on the government units that are parties to the dispute.[74]

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71. Council of the State Act, *supra* note 3, art. 43.

72. *Id.* art. 66(a). In a unitary judicial system, such as that of the United States of America, the situation is wholly different. Courts of justice repeatedly ascertained that it is their duty to withhold advisory opinions from the Executive. In his reply of August 8, 1793, to President George Washington concerning the construction of certain treaties with foreign countries, Chief Justice Jay stated that:

> These . . . considerations . . . afford strong arguments against the propriety of our extrajudicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions, seems to have been purposely as well as expressly united to the Executive departments . . . .

CHARLES WARREN, 1 THE SUPREME COURT IN UNITED STATES HISTORY 1789-1835, at 110-11 (1987); *see also* BATOR, *supra* note 13, at 65-72.

Advisory opinions, however, must be distinguished from declaratory judgments. An advisory opinion is an interpretation for a certain legal issue that does not constitute a dispute between parties before a court. It is a legal opinion not binding upon any party. A declaratory judgment, on the other hand, is a true judicial decision. It is binding upon the parties in a dispute. When it is declared, a declaratory decision becomes a res judicata one. It establishes a precedent that should be followed in similar, future cases. *See, e.g.*, Nashville, C. & St. L. R. Co. v. Wallace, 288 U.S. 249 (1933); United States v. Chambers, 291 U.S. 217 (1934); Aetna Life Co. v. Haworth, 300 U.S. 227 (1937); Declaratory Judgment Act, ch. 512, 48 Stat. 955 (1934). *See also* WARREN, *supra*.

73. Council of the State Act, *supra* note 3, art. 66.

74. *Id.* This provision does not, of course, exclude the jurisdiction of administrative. It applies only if the concerned governments' deputies decide to refer the dispute to the above mentioned general board. Having chosen this course of action, the court's legal opinion is authoritative and obligatory upon both government units. But, if one of the government units involved in a dispute prefers to raise the issue before the administrative law court, the court's jurisdiction is then invoked. It must decide the issue before it. *See supra* text accompanying note 21.

C. The Legislative Division

The Legislative Division of the Council is managed in a similar way. Councilors or assistant councilors are employed in the various units of this division. These units are located in the various ministries and public authorities. A legislative unit's duty is to prepare and formulate legislative proposals suggested by the concerned government units to be introduced before the National Assembly. The unit is authorized to formulate regulatory proposals for implementing existing acts and prepare and formulate decisions of a judicial character for the president of the republic.[75]

Jurisdictional conflicts that may arise between ordinary courts of justice and courts of the Council are to be solved by a special independent court duly established for this purpose.[76] The High Court has exclusive jurisdiction to determine such jurisdictional conflicts.[77] The Court also has exclusive authority to judge claims concerning the constitutionality of Acts of Parliament.[78]

D. Evaluation and History

Egyptian jurists favor this bilateral judicial system for several reasons. Advocates of the administrative judicial system argue that acts of public administration that are discharged by a public authority in its capacity as a public power differ fundamentally from business transactions of the government and private activities. In the former case, public authorities are equipped with certain powers that enable them to operate public services without hinderance. Private citizens and contractors are not equivalent to government authorities when one of the former is a party in an administrative governmental activity. Government authorities have certain privileges and powers that parties in business activities are not entitled to possess. Private activities, as opposed to public transactions, are conducted between equal parties that have similar rights and responsibilities. Furthermore, certain restrictions may be imposed upon government authorities as a means of securing good services.

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75. Council of the State Act, *supra* note 3, art. 45.

76. High Court Act, No. 81 (1969) (Egypt).

77. *Id.* art. 4-4.

78. *Id.* art. 4-1. Constitutional claims can be reviewed only before the High Court. *See* PERMANENT CONST. OF THE ARAB REPUBLIC OF EGYPT. Although previous constitutions concerning this issue were silent, the permanent constitution adds a further constitutional basis to the parent Act.

Supporters of the bilateral judicial system also maintain that governmental acts must be distinguished from private transactions. The former activities have certain characteristics. They are connected with public utilities and government services. These services must be delivered regularly and without stoppage or further delay. They should be delivered to the citizens on an equal basis and without discrimination. Government services, including social services, are provided for those who are qualified. Those who oversee these services should have certain powers to maintain these vital services. Their activities are also subject to public scrutiny.

Government officials operate activities that are financed by the public through taxes and levies. The public, through their representatives, should be allowed to supervise these activities. In order to achieve this purpose, certain restrictions may be imposed on public officials through acts of parliament. Private transactions, however, are financed by individuals and private agencies. Their activities are not directly connected with public utilities. Owners of private enterprises owe no obligations to the people except for self-imposed requirements which may allow them more profit. Objectives of these activities and the principles governing them and their characteristics, therefore, may be fundamentally different from those of public activities.

Disputes arising out of government activities, therefore, should be resolved by special judges that are close to the government departments and who are familiar with government activities and requirements. Unlike ordinary judges, an administrative law judge can view the administrative dispute before him in a broad and pragmatic perspective. The determination, therefore, will not be rigid and will allow for the smooth running of government. Arguably, an administrative law judge can strike a fair balance between the government's interest in conducting public services without undue hinderance and the citizen's interest in having the case decided by an independent judge that will not sacrifice the citizen's vital interests. Establishment of independent administrative courts is a mere application of the principles of job-specialization and job-classification, which should be followed by the judiciary.

Furthermore, administrative courts are more capable of invalidating acts of public administration than are ordinary courts. Since they are connected with government and trusted by it, administrative courts may set aside capricious acts of public administration. Administrative courts are confident that the government will not accuse them, as it might accuse ordinary courts, of hindering government activities.

Nevertheless, a judicial system's effectiveness should be viewed in light of its achievements and successes. A judicial legal system may be considered efficient if its advantages outweigh its disadvantages. In

addition, a judicial legal system is likely to be a viable, efficient system if it is deeply rooted in the constitutional, political, and social background of the society. Furthermore, bilateral judicial systems were not originally adopted for efficiency, fairness, and professional reasons. On the contrary, bilateral judicial systems were originally based upon historical and political considerations.[79] Efficiency and professional considerations emerged later. After complex and long developments, these defenses have emerged in place of political and historical reasons.

The bilateral judicial system is one of the main by-products of the French Revolution of 1789.[80] Its political leaders charged the overthrown political system, *inter alia*, with corruption and resistance to change and reform. They emphatically criticized parliaments for their role during the previous regime.[81] Parliaments were held responsible for corruption and lack of efficiency in public service. The leaders of the Revolution maintained that parliaments interfered with government activities and hindered reform proposals. Parliaments, which possessed the power to approve or disapprove government proposals, had placed great obstacles before the government to prevent or delay the passage of those proposals. They refused to accept government proposals and purposely delayed projects vital to the interest of the state.[82]

Political leaders confronted the judiciary with these charges and declared that the executive branch would be independent of the judiciary. Government activities would be managed by the executive without interference or hinderance by the judges. Thus, government disputes would be resolved by government officials, not by judges of the judicial branch of the state.[83] The new regime initially stated that further interference with government activities was considered a great felony against the state and the principles of the Revolution.[84] Government disputes were referred to public officials and ministers for resolution.[85] Certain

79. ABD EL-FATTAH HASSAN, LECTURES ON ADMINISTRATIVE LAW, THE INSTITUTE OF PUBLIC ADMINISTRATION 11-12 (1980). The author states that this system was originally adopted by the fathers of the 1789 French Revolution for historical and political considerations. *Id.*

80. *Id.*

81. Parliaments in France, at that time, discharged the judicial function of the State. Parliament of Paris was considered as a court of the monarch. For a detailed discussion upon the different legal systems of the world, see generally RENE DAVID & JOHN E. BRIERLEY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY (3rd ed. 1985).

82. HASSAN, *supra* note 79, at 11-12.

83. *Id.*

84. J.R. GARNER, ADMINISTRATIVE LAW 13 (5th ed. 1979).

85. HASSAN, *supra* note 79, at 11-12.

committees subsequently were established within the executive branch to solve government disputes.[86] Those committees reported their opinions to the administration. Their opinions constituted advice presented to the government for consideration. They were of no legal effect unless they were approved by the administration.[87]

The new leadership was faced with the fact that they had become judges in their own cause. This conclusion ran contrary to the principle of separation of powers, which was advocated by their supporters in reaction to the abuses of the previous regime. The doctrine initially used by the new regime now served as a counter weapon against it. As far as public administration disputes were concerned, it appeared that the executive branch had usurped the function of the judiciary. The doctrine of separation of powers[88] implies that litigation must be resolved by an independent judiciary—not by the party to the dispute (that is, the executive).

The new regime was faced with a dilemma of its own creation and solved it by developing its own legal experiment. French politicians did not resort to the previous judicial system. Instead, they developed their new experiment and built upon it.[89] They tried, however, to avoid serious charges against the new legal system.

The French version concerning judicial review of administrative action is distinct and unique, and many countries were influenced by it.[90] The French pyramid of the administrative judicial system is now complete. A comprehensive judicial system has gradually emerged within the executive branch of the state. There are different levels of administrative courts

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86. *Id.*

87. *Id.*

88. The American version concerning this question is wholly different. Ordinary courts are entrusted with the burden of solving disputes including public administration ones. Their duty is related to the interpretation of statutes. The Executive must implement them. The latter is not entitled to interpret acts or solve disputes. On the subject of separation of powers, see generally STANLEY DE SMITH'S, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION 3-10 (4th ed. 1980); GARNER, *supra* note 84, at 13-17; D. FOULKES, INTRODUCTION TO ADMINISTRATIVE LAW 1-12 (4th ed. 1979); JOHN D. MITCHELL, CONSTITUTIONAL LAW 40-50 (2nd ed. 1968); H. PHILLIPS, CONSTITUTIONAL AND ADMINISTRATIVE LAW 14-16 (6th ed. 1978); EMLYN C. WADE & ALEXANDER W. BRADLEY, CONSTITUTIONAL AND ADMINISTRATIVE LAW 47-59 (10th ed. 1985); P.J. Millward, *Judicial Review of Administrative Authority in Canada*, 39 CAN. B. REV. 351-95 (1961); *The Presidency and Congress: Constitutionally Separated and Shared Powers: A Federalist Society Symposium*, 68 WASH. U. L.Q. 485 (1990); *see also infra* note 130.

89. HASSAN, *supra* note 79, at 11-12.

90. Egypt, Syria, and Lebanon are among the leading Middle East countries that have followed the French judicial pattern. Algeria, Tunisia, and Morocco also follow this system.

analogous to those of ordinary courts.[91] The independence of these courts has been formally maintained since 1872.[92] The Council of the State and its apparatus has ascertained its role in supervising acts of public administration and maintaining the citizen's rights.[93] The Court of Conflict is entrusted with solving jurisdictional disputes which may well arise between ordinary and administrative courts in this bilateral judicial system.[94]

Bilateral[95] judicial systems, however, do not escape criticism. Complexity, discrimination,[96] jurisdictional conflict, and costs are only some of the criticisms that are levelled against them. It should also be remembered that ordinary courts of justice, as independent courts, have proven capable of securing individual's rights and liberties against abuses of power on the part of public authorities. They maintain this purpose without sacrificing government needs and the public interest. Simplicity, harmony, economy, openness, and equality are other advantages of this system. Efficiency is a remarkable achievement of this system. Judges may be familiar with acts of public administration because these acts are regularly reviewed by them. Certain public law disputes may be allocated, if necessary, to a special panel or chamber within an ordinary court. Furthermore, special courts within the judiciary may be established if the nature of the work so requires.

In summary, a judicial legal system may be appreciated in light of its efficiency and its ability to maintain the rule of law and function of government. Applications of both judicial systems in different countries may provide examples in which one judicial system or the other proves to be successful. Other examples may reveal contrary conclusions. In other words, a judicial system, in order to be successful, should not be removed from the context of its environment. It should maintain the vital interests of the state and the principles of justice.

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91. HASSAN, *supra* note 79, at 11-12.

92. *Id.*

93. *Id.*

94. *Id.*

95. The bilateral judicial system contrasts the unitary judicial system. The latter system is followed by common law countries, such as the United States of America and the United Kingdom.

96. This charge is due to the fact that administrative courts may favor the administration and allow it privileges at the expense of the other party to the dispute, that is, the citizen.

III. CIVIL SERVICE REGULATORY AUTHORITIES: AN OVERVIEW

A. Civil Servants: Definition and Categories

A public employee is any officer appointed temporarily or permanently by an authorized public authority in a government ministry, a public agency, a public corporation, or a local government authority to carry out government activities directly connected with public utilities.[97] This definition indicates that certain conditions must be fulfilled to consider a public employee a civil servant. For instance, the employee must be appointed by an authorized officer acting within the limits of the officer's jurisdiction. Additionally, the employee must be appointed in an office within the central government, a local government, a public agency, or a public corporation.[98] Lastly, the activities should be related to public services and not to business activities.

Employees of the public sector[99] are not within the scope of public service. Public sector employees carry out business activities of the state in a manner analogous to that of the private sector. They are, therefore, considered private employees rather than public officers.[100]

The Civil Service Employees Act (the Act) clearly mandates[101] that employees who are temporarily appointed in permanent jobs in a government unit are public employees.[102] The provisions of the Act, therefore, apply to them.[103] Nevertheless, not all public employees in the executive are considered civil servants. Public employees that are explicitly subject to special acts, but not to the Civil Service Employees Act are not within the scope of the term "civil servant." Their affairs, including disciplinary

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97. *See also* TAMAWI, *supra* note 6, at 42-79.

98. *See* Civil Service Employees Act, *supra* note 69, art. 2.1. The term government unit will be used hereinafter to refer to any government ministry, local government authority, public corporation, or public agency.

99. The term public sector refers to public companies owned and managed by the state. The public sector emerged in Egypt after the 1952 Revolution. The government converted many big private companies into public companies owned by the state. Furthermore, the government established new public companies to run economic activities such as industry, trade, and commerce. Employees of public sector companies discharge economical activities of the state in a business-like manner.

100. Opinion of the General Board for the Legal Opinion Division of the Council, No. 59/1/61.

101. Civil Service Employees Act, *supra* note 69, art. 13.

102. The term "public employees" used in the Act is synonymous with the term civil servant. Both terms may, therefore, be used interchangeably throughout the text of the article.

103. *Id.*

matters, are governed by the terms of special acts which specifically apply to them.[104]

Civil servants may be classified according to the authority that employs them as follows: employees of the central government; employees of independent public agencies[105] and corporations whose affairs are not governed by special acts; and employees of local government.[106] Civil servants may also be classified according to their ranks. They are classified into two major categories. The first category is comprised of officials of the highest category, which includes the deputy minister, the excellent grade holders, the highest grade holders, and director generals, whether they are directors within a government unit headquarters, regional directorates, or directorates not directly connected with the central government.[107] The second category is classified into six grades.[108]

As far as disciplinary penalties are concerned, specific provisions may apply to each category of officials. High ranking officials may be penalized by one of the following penalties: caution, reprimand, discharge, and dismissal.[109] Penalties that may be imposed upon an official of the second category are extensive in their scope and number.[110]

Civil servants of the highest category and their superiors are considered disciplinary authorities with respect to officials of the second category. Their disciplinary power, however, is limited. A high ranking officer is authorized to impose not more than a month's salary reduction.[111] The director of the concerned government unit, however, is authorized to impose penalties, but not more than a promotion delay penalty. The director has the authority to impose such penalties upon all offending officials of the two categories.[112]

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104. *See* Administrative Deputy and Disciplinary Proceedings Act, *supra* note 4, arts. 33-42.

105. Heads of independent public agencies and corporations are equal in their official status in relation to the Minister's status. Central Agency for Management and Administration Act, No. 118 (1964) (Egypt), *amended by* Central Agency for Management and Administration Act, art. 2 (1974) (Egypt).

106. Governors of the different regions of Egypt are equal in their official status, within their regions, to the Minister's status. Local Government Act, No. 43, art. 27 (1979) (Egypt).

107. Civil Service Employees Act, No. 47 (1978) (Egypt), *amended by* Civil Service Employees Act, No. 117, art. 8 (1982) (Egypt).

108. *Id.*

109. *Id.* art. 80.

110. *Id.*

111. *Id.* art. 82.1.

112. *Id.* art. 82.2.

Penalties imposed by these administrative authorities are subject to review by disciplinary courts whose decisions can be reviewed on appeal before the High Administrative Court.[113] Disciplinary decisions of these administrative authorities cannot be reviewed by disciplinary courts unless the disciplined officer has exhausted all the administrative appellate channels.[114] The disciplined officer should then bring a case before the disciplinary court within the specified time limit.[115]

B. The Central Agency for Management and Administration

In 1964, the Central Agency for Management and Administration[116] (the Central Agency) replaced its predecessor, the Civil Service Council. It is an independent public agency, which reports directly to the Council of Ministers. Its duty is to improve the standards and efficiency of the civil service and to secure uniform services for citizens with equal qualifications.[117] The Central Agency is authorized to supervise government units in order to achieve its purposes. It is authorized to suggest, participate, and lay down general civil service policy issues that should be carried out by government units.[118]

The Central Agency discharges its functions through advisors, through the Board of Administrative Development, and through its various central departments and regional offices.[119] Some of the important functions of the Central Agency are job classification, on-the-job training, the simplification of job methods and procedures, and job efficiency evaluation.[120] The Central Agency is the sole channel through which government units may seek advice and the legal opinion of the Council concerning the interpretation of the provisions of the Civil Service Employees Act.[121]

The Civil Service Affairs Committee serves as an advisor and coordinator for the Central Agency concerning civil service activities. Its

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113. *Id.* art. 82.4; *see infra* text accompanying notes 118-120.

114. Civil Service Employees Act, *supra* note 69.

115. *Id.* art. 8; *see* Council of the State Act, *supra* note 3, art. 12.1.

116. Central Agency for Management and Administration Act, *supra* note 105, art. 1.

117. *Id.* art. 3. This express provision's intention was "to secure equal services" and to maintain new values prevailing in Egypt. During that period and later, there was much emphasis placed upon maintaining the good machinery of government by selecting officials according to their merits and upon an equal basis. TAMAWI, *supra* note 6, at 41-56.

118. Central Agency for Management and Administration Act, *supra* note 105, *art. 55.*

119. Central Agency President's Order, No. 24 (1975) (Egypt).

120. *Id.*

121. *See supra* text accompanying note 69.

personnel jurisdiction covers all civil servants governed by the provisions of the Act. It consists of the director of the Central Agency, who serves as its chairperson, and other members appointed by virtue of their offices.[122]

The Committee's duties include issuing regulations and orders to further the implementation of the provisions of the Act, as well as issuing directives to government units to carry out legal opinions of the Council concerning civil service issues.[123] The committee discharges its functions under the responsibility of its chairperson, who is authorized to issue a regulation stating the rules and procedures that shall be followed by the committee.[124]

C. The Employees Affairs Committee

The Employees Affairs Committee has jurisdiction over specific civil service issues exclusively related to specific government units.[125] Its director is connected with the respective government unit. It is made up of at least three civil servants, one of which must be a union committee member. This official must be chosen by the Union Committee Board within the concerned government unit.

The Committee's duty is to assist the government unit in handling civil service issues related to appointment, transfer, promotion, and annual salary increases of officials in the second category.[126] It is also authorized to endorse evaluation reports for employees of the second category. In addition, the Committee should discharge any function assigned to it by the head of the concerned government unit.[127] The Committee's functions with regard to its government unit are closely connected to those of the Civil Service Affairs Central Committee. Employees Affairs Committee, therefore, should act in harmony with the general policy determined by the Civil Service Affairs Central Committee.

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122. Members of the Committee include: the Chairman of the Board of the Legal Opinion and Legislation Divisions; the head of the Legislative Section of the Council; the Director of Job Classification Central Administration (the "Central Agency"); the Minister of Finance Deputy for the State Budget Affairs, and any other deputy minister of the named ministry chosen by its minister. Civil Service Employees Act, *supra* note 69, art. 3.

123. *Id.* art. 3.

124. *Id.*

125. *Id.* art. 4.

126. *Id.*

127. *Id.*

The jurisdiction of the Civil Service Affairs and the Employees' Affairs Committees is wholly restricted to the province of the civil service rather than to the public sector service province. The latter's affairs are regulated by the High Council for the relevant economic sector and by the company's board respectively.[128]

D. The Administrative Deputy Agency

The Administrative Deputy Agency (the Agency) has a crucial role in enhancing job efficiency, curtailing acts of maladministration, and investigating financial and administrative offenses committed within the civil service. The Agency also has the power to prosecute the individuals who engage in these activities. Its primary duty is to control government activities and to investigate offenses that are committed by officials.[129] In order to fulfill its role, the Agency is exclusively authorized to institute disciplinary proceedings before disciplinary courts. The Agency carries out its duties either upon its own initiative during its daily business or upon the request of a government unit.[130]

The Agency is divided into two basic divisions: control and investigation.[131] Each division is subdivided into departments whose jurisdictions are determined by the president of the republic upon a recommendation of the director general of the Agency. The Agency is an independent public authority directly connected with the office of the president of the republic.[132] Due to its diverse activities, the Agency also enjoys close relations with the head of the Central Agency, the minister of justice, and the minister of the state for the council of minister's affairs.[133]

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128. Employees of the Public Sector Act, No. 48, arts. 2, 4, 8-10 (1978) (Egypt); *see* IBRAHIM HANBAL, EGYPTIAN EMPLOYMENT SYSTEMS IN THE CIVIL SERVICE AND IN THE PUBLIC SECTOR (1978). There are, however, many similarities between the provisions of the Civil Service Employees Act and the provisions of the Employees of the Public Sector Act. *Id.* Ranks and grades of the employees of the public sector are similar to those in the civil service. *Id.* Similarly, rules and procedures concerning disciplinary proceedings are not very much different in both services. *Id.*

129. Administrative Deputy and Disciplinary Proceedings Act, *supra* note 47, art. 3.

130. *Id.*

131. *Id.*

132. Administrative Deputy and Disciplinary Proceedings Act, No. 117, art. 1 (1958) (Egypt), *amended by* Administrative Deputy and Disciplinary Proceedings Act, No. 183 (1960) (Egypt).

133. Central Agency for Management and Administration Act, *supra* note 105, art. 5.

The Agency is the sole authority empowered to investigate any official accusation made against any official of the highest category.[134] It has exclusive jurisdiction to investigate all allegations involving financial offenses or losses involving the state budget raised against any civil servant, regardless of the rank or grade of the civil servant.[135] Supervisors of an accused official are deprived of any power to investigate. The director of the concerned government unit must immediately refer the case to the Agency to investigate and to take the necessary course of action.[136]

Nevertheless, if the Agency recommends to the concerned government unit that no further action should be taken upon the case at issue or if it recommends a certain penalty and the director of the concerned government unit is not satisfied with the Agency's course of action, the director may again refer the case to the Agency to institute disciplinary proceedings against the accused official.[137] If this is the case, the Agency must raise the dispute before the disciplinary court for its further consideration.[138]

In cases that do not require by law that investigations must be carried out by the Agency, the Agency is authorized to institute legal proceedings if it finds that the penalty imposed upon the offending officer by his superior is insufficient in light of the seriousness of the offense.[139]

As far as instituting proceedings and prosecution before disciplinary courts is concerned, the Agency has exclusive jurisdiction, without any limitations, to carry out this duty.[140] Any proceedings instituted before a disciplinary court upon the initiative of any authority other than the Agency, or any proceedings carried out in the absence of the Agency's representative, are considered to be invalid. The continuing presence of the Agency in these proceedings, therefore, is a prerequisite for the legitimacy of the proceedings. Its absence is a fatal and incurable procedural defect.[141]

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134. Civil Service Employees Act, No. 115, art. 79 (1983) (Egypt).

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. Administrative Deputy and Disciplinary Proceedings Act, *supra* note 47, art. 4.

141. On the subject of "disciplinary action" in the United States of America, see Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1984); Rutan v. Republican Party of Ill., 110 S.Ct. 2729 (1990); Egon Guttman, *The Development and Exercise of Appellate Power in Adverse Action Appeals*, 19 AM. U. L. REV. 323 (1970); Theodore C. Hirt, *Union Presence in Disciplinary Meetings*, 41 U. CHI. L. REV. 329 (1974); Thomas K. Houston, *Due Process and Public Employment in Perspective: Arbitrary Dismissals of Non-Civil Service Employees*, 19

E. Evaluation

The Central Agency is entrusted with the overall responsibility of regulating civil service affairs. Its director is assisted by committees whose members include judicial representatives and employees' union members. Civil service employees are allowed to join unions with their counterparts in the public and the private sectors. Nevertheless, it is difficult to determine whether public employees may have a role in determining civil service policies. These policies are unilaterally determined by the administration.

The expansion of the public sector in Egypt has encouraged jurists to suggest that rules regulating the affairs of the civil service and the public sector should be identical and uniform.[142] As a result of efforts that have been made by the legislature, changes have been introduced to regulate the affairs of employment in both systems. However, it is difficult to say whether the same legal rules will apply to both sectors of employment. The bilateral judicial system, by its very nature, implies that certain rules should be applied to civil servants rather than to employees of the public sector.

Constant changes in the regulation of the affairs of the civil service may lead to lack of clarity, confusion, and uncertainty. Projects for administrative reform have led sometimes to complexity and interaction among different regulatory authorities.[143] It would seem, however, that there is a growing tendency to give the Council of the State a steady hand in regulating the affairs of the civil service. Civil service affairs are managerial and should be discharged by administrators who possess discretion in handling the affairs of the civil service. Therefore, in the best interests of an efficient administration, this emerging trend should not

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UCLA L. REV. 1052 (1972); Richard Johnson & Richard G. Stoll, *Judicial Review of Federal Employee Dismissals and Other Adverse Actions*, 57 CORNELL L. REV. 178 (1972); William V. Luneburg, *The Federal Personnel Complaint, Appeal and Grievance Systems: A Structural Overview and Proposed Revisions*, 78 KY. L.J. 1 (1990); Richard A. Merrill, *Procedures for Adverse Actions Against Federal Employees*, 59 VA. L. REV. 196 (1973); Fredrich H. Thomforde, *Controlling Administrative Sanctions*, 74 MICH. L. REV. 709 (1976); Robert P. Williams, *Administrative Law*, 41 MERCER L. REV. 1173 (1990); Symposium, *Application of the Constitutional Privacy Right to Exclusions and Dismissals from Public Employment, Student Symposium*, 5 DUKE L.J. 1037 (1973); ROBERT G. VAUGHN, PRINCIPLES OF CIVIL SERVICE LAW, 5.1-5.36 (1979).

142. *See* TAMAWI, *supra* note 6, at 42-43.

143. There is overlapping among the activities of the Administrative Deputy Agency, the Attorney General, the Accountancy Council, the Central Agency, and the various ministries of the state. *See supra* text accompanying note 50, 97.

exceed the boundaries of reason. Flexibility is a fundamental element that ensures the smooth running of government activities.

IV. THE COUNCIL AND ITS OVERSIGHT ROLE OVER DISCIPLINARY ACTIONS: APPRAISAL AND PRACTICAL ANALYSIS

The Council's judicial division has ultimate and exclusive jurisdiction to review disciplinary actions imposed upon civil servants by disciplinary authorities.[144] Furthermore, disciplinary courts within the Council are disciplinary authorities for serious disciplinary actions.[145] Disciplinary courts and administrative disciplinary authorities discharge their judicial function under the overall supervision of the High Administrative Court (the "Court"). The determinations of administrative disciplinary authorities are reviewed by respective disciplinary courts. The decisions of the disciplinary authorities and the penalties imposed by the courts are then subject to review before the High Administrative Court.

As an appellate court, the High Administrative Court is authorized to review disciplinary courts' decisions and to quash them if they are found to be contrary to law.[146] The High Administrative Court is additionally authorized to quash a disciplinary court's decision if it finds that the decision was not supported by evidence.[147] It may also strike a court's decision if the penalty is found to be unreasonable in comparison to the seriousness of the official's offense.[148]

The Court may not, however, inquire into the conclusion[149] reached by a disciplinary court if the latter's conclusion was supported by evidence duly contained in the disciplinary proceedings. The Court may allow disciplinary courts discretion to choose a suitable penalty for the offense committed as long as the penalty is balanced and not excessive.[150]

This supervisory role of the Court may lead to harmony in disciplinary courts' rulings and to stability and consistency concerning disciplinary issues. Moreover, this settled disciplinary policy may further the workings of administration and improve job security within the civil service.

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144. *See supra* text accompanying note 21.

145. *See supra* text accompanying notes 39, 120.

146. *See supra* text accompanying note 38.

147. *See* AHMED M. JOMAH, DISCIPLINARY COURTS DISPUTES 51 (1984).

148. 7 High Administrative Court No. 563 (1961).

149. 14 High Administrative Court No. 644 (1969).

150. *See supra* text accompanying notes 87-88.

It is striking, however, that the structure of the disciplinary system is highly irregular. Minimal penalties imposed by administrative authorities may be reviewed at three levels. A disciplinary penalty may be reviewed by a supervisor's director.[151] The director may amend, reverse, or quash the subordinate's decision. In some cases, however, the director is only authorized to endorse or to quash the disciplinary decision—not to amend the penalty decision.[152] A disciplinary determination by the concerned administrative authority is subject to disciplinary court review. Its decision may be reviewed on appeal by the Court.

In contrast, only one appellate avenue is available for penalties imposed by disciplinary courts. These decisions can be reviewed only by the Court.[153] Such penalties can be far reaching and include discharge and dismissal.[154] It is for this reason that further appellate channels should be available with regard to serious disciplinary actions. In order to foster job security and to enhance a healthy environment within the civil service, it is necessary to provide civil servants with further guarantees, which may reduce the possibility of error on the part of disciplinary courts.

The Egyptian disciplinary legal system, however, does provide civil servants with substantial safeguards. Important disciplinary cases are determined by independent courts.[155] Investigation in these cases, and in others, is carried out by a neutral authority—not by the accused official's supervisors.[156] This procedure may influence disciplinary authorities to discharge their discretion without excess or abuse.[157] It is hoped that such procedures will not be at the expense of job effectiveness and the efficient functioning of the administration.

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151. Council of the State Act, *supra* note 3, arts. 11.9, 12; *see also* Civil Service Employees Act, *supra* note 134, art. 82.1.

152. General Board for Legal Opinion and Legislation Divisions (1969) (Egypt).

153. Council of the State Act, *supra* note 3, art. 22.

154. *Id.* art. 19.

155. *See supra* text accompanying notes 39, 111.

156. *See supra* text accompanying note 101.

157. The use of discretion in the disciplinary process is as essential as the abuse of discretion is intolerable. The High Administrative Court in its review policy should strike a good supervisory policy according to which guarantees to the employees as well as civil service effectiveness can be maintained. *See generally* D.J. GALLIGAN, DISCRETIONARY POWERS: A LEGAL STUDY OF OFFICIAL DISCRETION (1986); George C. Christie, *An Essay on Discretion*, 5 Duke L. J. 747 (1986); Charles H. Koch, *Judicial Review of Administrative Discretion*, 54 GEO. WASH. L. REV. 469 (1986); Ronald M. Levin, *Administrative Discretion, Judicial Review, and the Gloomy World of Judge Smith*, 2 DUKE L.J. 258 (1986); Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 167 (1975).

Disciplinary penalties should not be imposed upon innocent officials. An offense without legal justification[158] must be committed by an official before legal proceedings may be initiated. The Council stated that a disciplinary action should be based upon a disciplinary offense committed by an accused official. Otherwise, a disciplinary penalty is not authorized and should be set aside.[159] It is contrary to law to impose a penalty other than those expressly stated in the enabling legislation.[160] An offending official should not be punished for an offense by more than one penalty at a time.[161] If the official was so penalized, the respective court may determine the suitable penalty and quash the others.[162] Furthermore, penalties should not be imposed again upon an official if no new offense was committed.[163]

The Council made it abundantly clear that a disciplinary action cannot stand unless it was discharged by an authorized official.[164] Delegation in disciplinary matters is not allowed in the absence of express provisions to this effect.[165]

The Court will allow a claim that was made by a disciplinary court other than the one authorized to have jurisdiction over the case at issue. This defense may be raised by an interested official. It may also be raised by the Court, *sua sponte*. Such a contention is considered a matter of sub-

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158. For example, an official may be exempted from a penalty if proven mentally ill. The official might be discharged from any official liability if it was proven that the official carried out the act in compliance with a supervisor's orders which must be obeyed. *See* Civil Service Employees Act, art. 13 (1978) (Egypt).

159. 13 High Administrative Court No. 775 (1969).

160. *See supra* text accompanying notes 84, 169; *see also* 19 High Administrative Court No. 884 (1978).

161. 3 High Administrative Court No. 686 (1957).

162. HANBAL, *supra* note 128.

163. 8 High Administrative Court No. 708 (1974).

164. FAHMI IZZAT, DISCIPLINARY AUTHORITY: A COMPARISON BETWEEN ADMINISTRATIVE AND JUDICIAL DISCIPLINARY APPROACHES 237 (1980).

165. 12 High Administrative Court No. 1322 (1970); *see also* ABD EL-WAHAB EL-BANDARI, DISCIPLINARY JURISDICTION AND DISCIPLINARY AUTHORITIES, 69-80; IZZAT, *supra* note 164.

On delegation in general, see generally B.W. Coyer, *Administrative Law*, 36 WAYNE L. REV. 239 (1990); Harold J. Krent, *Fragmenting the Unitary Executive: Congressional Delegations of Administrative Authority Outside the Federal Government*, 85 NW. U. L. REV. 62 (1990); D. Millon, *The Sherman Act and the Balance of Power*, 61 S. CAL. L. REV. 1219 (1988).

stance.[166] It can be raised at any time as long as there was no final decision upon the case.[167]

An official has committed an offense if the action was contrary to the explicit duties of the official or if it was prohibited by law.[168] An official's act may also be considered an offense if it was contrary to the requirements of public office[169] and the prevailing values within Egyptian society.[170] The Council asserted that official offenses include acts that may inflict harm upon the reputation of the civil service. Such acts may be judged by the disciplinary authority in light of social values, customs, and the prevailing circumstances.[171]

The Council also ascertained that an act of a civil servant may be considered an offense even if it was committed outside of work.[172] It would be an offense if the act was considered unethical or if it adversely affected the reputation of the civil servant and job requirements.

The Council, however, distinguished between subordinate officials and high ranking officials with respect to acts of misconduct. It held that while an act of a subordinate official may not be unethical under some circumstances, it might be considered improper if committed by a high ranking official.[173]

The Council also held that, whereas acts of misconduct must be judged in accordance with the prevailing values within Egyptian society, they must not be viewed in the light of values prevailing in foreign environments.[174] The Court repudiated a decision that held that an official's conduct outside work is a personal matter. The Court ascertained that the official's conduct was unethical. The official should have behaved properly and in harmony with prevailing values.[175]

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166. 23 High Administrative Court No. 501 (1983).

167. *Id.*

168. Civil Service Employees Act of 1978, *supra note* 69, art. 80.

169. *Id.* art. 78.

170. *Id.*; *see also* 14 High Administrative Court No. 991 (1973).

171. 1 Disciplinary Court for the Ministry of Health, No. 5; 15 High Administrative Court No. 343 (1970).

172. 15 High Administrative Court No. 244 (1973); HANABAL, *supra* note 128 (citing 15 High Admistrative Court No. 244 (1973)).

173. 22 General Board for Legal Opinion and Legislation, No. 78 (1968) (Egypt); *see* TAMAWI, *supra* note 6, at 246. In this case the subordinate official was accused of taking drugs in his private life. *Id.* It was contended that such an act was improper. *Id.*

174. MUSTAFA AFIFI, DISCIPLINARY PENALTIES: RATIONALE AND OBJECTS 508 (1976).

175. *Id.*; *see also* 13 High Administrative Court No. 328 (1969).

Nevertheless, acts of misconduct are not enumerated.[176] It is, therefore, left to the disciplinary authority to decide whether an act lies inside or outside the boundaries of good conduct. A disciplinary authority may decide the proper penalty to be imposed as a result of an act of misconduct. However, it is now settled that a disciplinary authority's decision may be quashed by the concerned court if the penalty was found excessive in relation to the seriousness of the offense.[177]

Administrative courts review disciplinary actions with considerable care in order to maintain fair procedures and to protect innocent officials against abuses of discretion on the part of a disciplinary authority. An official should be afforded a full opportunity to be heard before a disciplinary decision is made.[178] Investigation should be carried out formally.[179] It should be made in writing, except in cases that do not exceed three days reduction in salary penalty.[180] In the latter case, reasons for such a penalty should be disclosed. A summary of an official's claims should be clearly stated in the disciplinary decision.[181] Failure to state reasons for a disciplinary decision renders it invalid.[182] Accordingly, it may be quashed by the concerned court.[183]

Investigation, however, is not always required.[184] If the accused official refused to attend the investigation[185] or if the case was criminal, thereby causing the accused to be investigated in criminal proceedings,[186] a claim by the accused official that his case was not investigated will not stand. Furthermore, the official's claim may not be sustained by the Court if the official contended that the investigation was defective. The official should have raised the contention before the respective disciplinary court and not before the High Administrative Court.[187] On the other hand, a disciplinary decision may be sustained even if the investigatory proceed -

176. 7 High Administrative Court No. 27 (1961).

177. 19 High Administrative Court No. 10 (1975).

178. Civil Service Employees Act, *supra* note 69, art. 81.

179. *Id.* art 79.

180. *Id.*; 13 High Administrative Court No. 451 (1973).

181. *Id.*

182. *Id.*

183. 13 High Administrative Court No. 451 (1973).

184. Civil Service Employees Act, *supra note* 69, art. 79.

185. 21 High Administrative Court No. 22 (1977).

186. *Id.*

187. 14 High Administrative Court No. 644 (1969).

ings were lost, provided that the decision was based upon proven facts contained in the file of the disciplinary proceedings.[188]

The disciplinary authority should base its decision on correct and relevant facts.[189] Reasons for its decision should be clearly stated. There should be no contradiction between them.[190] The respective court may, however, rely upon hearsay evidence and upon witnesses' claims disclosed, but not under oath, if it reached its conclusion from proven facts contained in file proceedings.[191] The court may not be required to accept additional documents unless they were necessary to the court's decision and their presence may influence the court.[192]

The Court, in its rulings, clearly states that disciplinary actions are distinct from criminal ones.[193] Disciplinary actions are raised against civil servants within the civil service to eliminate offenses that may adversely affect job efficiency. A criminal action may be raised against an offender who commits a crime against society and public order. Disciplinary actions, therefore, should be based upon civil law provisions, and not those of criminal law. A disciplinary act justified upon a criminal law provision, therefore, was held invalid.[194]

Disciplinary authorities, including disciplinary courts, are not required to suspend disciplinary proceedings if criminal proceedings are initiated against an accused official.[195] The concerned disciplinary authority may continue its proceedings and it may decide the case. A disciplinary authority may also impose a penalty upon an accused official even if the latter was vindicated in a criminal proceeding.[196] What may constitute an official offense might not be considered a criminal one. Nevertheless, the Court ruled that an accused official should not be disciplined if the accusation raised against him before a criminal court was not proven.[197] The disciplinary decision in that case was based on false grounds.

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188. 7 High Administrative Court No. 763 (1963).

189. JOMAH, *supra* note 147.

190. *Id.* at 44.

191. *Id.* at 41-44.

192. 19 High Administrative Court No. 629 (1981).

193. 4 High Administrative Court No. 458 (1958).

194. 7 High Administrative Court No. 1330 (1963).

195. 12 High Administrative Court No. 532 (1967).

196. 17 High Administrative Court No. 5410 (1973).

197. *Id.*; *see also* Tamawi, *supra* note 6, at 262-64.

It should be noted, however, that an official's act may constitute an official offense as well as a criminal one.[198] In such cases, the offending official may be disciplined by the disciplinary authority even if he was given a criminal sentence. In certain criminal cases, an offending official may be jailed. If he received a prison sentence, the penalized official may be discharged from service without any further action.[199] In this situation, discharge is a collateral penalty.[200] The discharged official is not entitled to have his case reviewed before a disciplinary court.[201]

A disciplinary court has jurisdiction over acts of discharge or dismissal carried out in disciplinary proceedings. The Court also stated that disciplinary courts are entitled to entertain only disciplinary claims. Claims against adverse actions, other than disciplinary ones, are not within the purview of disciplinary courts.[202] Therefore, claims against evaluation reports, according to which an official's salary or promotion was delayed, are not within the province of disciplinary courts.[203] Such decisions may, however, be reviewed by the administrative judicial court since they are administrative decisions made by public authorities.[204] Termination of an official's service on the grounds that he was absent from his work without justifiable reasons,[205] or on the grounds that he duly resigned,[206] can be raised before the administrative judicial court, but not before the disciplinary courts. These actions are managerial actions rather than disciplinary ones. The Court has repeatedly ascertained that managerial acts, even if they involve adverse consequences, are not within the purview of disciplinary courts.[207]

Explicit disciplinary penalties only are within the jurisdiction of disciplinary courts.[208] If an adverse action was taken against an official and it was not within the penalties[209] stated in the enabling legislation,

198. 10 High Administrative Court No. 1433 (1965).

199. Civil Service Employees Act, *supra* note 69, arts. 94-97.

200. General Board of the Council of the State Opinion, No. 114 (1964) (Egypt).

201. *Id.*

202. 15 High Administrative Court No. 49 (1965); *see* AFIFI, *supra* note 175, at 85.

203. 4 Judicial Administration Council No. 418 (1950); *see also* JOMAH, *supra* note 147.

204. *See supra* text accompanying notes 32, 33.

205. 19 High Administrative Court No. 295 (1974).

206. Council of the State Act, *supra* note 3, art. 10.

207. 11 High Administrative Court No. 514, 232 (1967).

208. *See supra* text accompanying note 42.

209. *See supra* text accompanying note 44; *see also* 7 High Administrative Court No. 859 (1962).

disciplinary courts are not the proper avenue for redress. The official should raise his case before the administrative judicial court.

Official resignation during the course of disciplinary proceedings, however, will not be allowed to defeat the jurisdiction of a disciplinary court. A claim by the respective administrative authority to withdraw disciplinary proceedings may not be accepted by a disciplinary court. Despite such claims, a disciplinary court's jurisdiction remains intact, and a final decision on the subject matter may be reached.[210]

However, it is not legally defensible for an official to contend that he committed his act without knowing it was prohibited.[211] It is also not a valid defense to contend that an act was justified on the grounds that no legislative prohibition existed if the act violated an administrative custom followed by the concerned ministry.[212] Neither is it a valid defense for an accused official to maintain that he discharged his act according to the prevailing administrative traditions if it was proven that such an act was contrary to law.[213] The official cannot validly contend that he committed his act as a result of the heavy burden of work assigned to him.[214] Nor is it justified by law to contend that an unlawful act discharged by an accused official was assigned to him by an invalid act.[215]

Neither negligence nor good faith can absolve an accused official from his responsibilities.[216] It may be argued that lack of competence as well as misinterpretation of legislation constitute official offenses. One may, however, be inclined to believe that only gross inefficiency should constitute an official offense. Mistakes may be committed by a reasonable official when he interprets a legislative provision related to his work.[217] Moreover, a wrongful act may occur as a result of lack of training on the

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210. 15 High Administrative Court No. 963 (1973).

211. 12 High Administrative Court No. 122 (1966); *see also* Civil Service Employees Act, *supra* note 69, art. 76.

212. *See supra* text accompanying note 136.

213. *See supra* text accompanying note 113.

214. IZZAT, *supra* note 64.

215. 8 High Administrative Court No. 123 (1962).

216. In the context of negligence theory, fault amounts to a showing of harm caused by an official whose conduct fell below the standard of reasonable care for someone engaging in the activity that led to an injury of the public interest or to an individual. *See generally* Samuel Estreicher & Richard L. Revesz, *Nonacquiescence by Federal Administrative Agencies*, 98 YALE L.J. 679 (1980); William V. Luneburg, *Petitioning Federal Agencies For Rulemaking: An Overview of Administrative and Judicial Practice and Some Recommendation for Improvement*, WIS. L. REV. 1 (1988); PETER L. STRAUSS, AN INTRODUCTION TO ADMINISTRATIVE JUSTICE IN THE UNITED STATES 271-86 (1989).

217. 12 High Administrative Court No. 1106 (1973).

part of an accused official. These actions should not be viewed as disciplinary offenses that can be cured only by disciplinary penalties. A disciplinary penalty should be rationally employed. It should not be used to threaten innocent officials. On-the-job training programs can reduce lack of competence on their part.

Nevertheless, gross inefficiency should not be sustained.[218] Officials who are charged with such an offense should be subject to disciplinary actions as a consequence. Negligence should also be considered an official offense that is not justifiable.[219]

The jurisdiction of a disciplinary court includes all matters pertaining to disciplinary issues. Thus, compensation[220] claims arising out of disciplinary actions are within the jurisdiction of disciplinary courts.[221] Compensation claims may be raised directly or indirectly. The affected person can independently raise his monetary claim before the concerned disciplinary court. He should prove that his injuries were caused by the illegal penalty imposed on him.[222] Nevertheless, compensation may not be awarded for a dismissed official if the dismissal penalty was quashed and he was instead given another one.[223] In such a case an official was not vindicated, but, rather, he was penalized by a lesser penalty since the original penalty was found to be excessive and unbalanced. Generally speaking, compensation claims against invalid disciplinary decisions may be limited to moral rather than monetary compensation. Declaring a disciplinary action invalid and striking it down may be appropriate compensation.[224]

In summary, the Council has an ultimate role in policing administrative acts of public administration. It has an exclusive role in reviewing disciplinary actions raised against civil servants. It can strike down invalid disciplinary acts and provide monetary compensation for the injured official as well.

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218. *See* FELIX A. NIGRO & LLOYD G. NIGRO, MODERN PUBLIC ADMINISTRATION 413-14 (1973); THE NEW PUBLIC PERSONNEL ADMINISTRATION 56-86 (1986); Cass R. Sunstein, *Reviewing Agency Inaction After* Heckler v. Chaney, 52 U. CHI. L. REV. 653 (1985).

219. Jomah, *supra* note 147; *cf.* TAMAWI, *supra* note 6, at 76.

220. As far as governmental tort liability is concerned, see generally George A. Bermann, *Integrating Governmental and Officer Tort Liability*, 77 COLUM. L. REV. 1175 (1977); P.L. STRAUSS, AN INTRODUCTION TO ADMINISTRATIVE JUSTICE IN THE UNITED STATES 271-86 (1989); *see also* ROBINSON, *supra* note 216.

221. 2 High Administrative Court No. 9 (1972).

222. 23 High Administrative Court No. 426 (1978).

223. JOMAH, *supra* note 147, at 51.

224. *Id.* at 124.

Furthermore, disciplinary courts are entrusted with the burden of imposing disciplinary penalties, including dismissal and discharge. They perform the latter function in their capacity as disciplinary authorities. Their decisions may be reviewed by the High Administrative Court. The Council's disciplinary decisions are of far reaching importance. Its disciplinary policy should enhance job security and the operation of administration.

The Egyptian legislative disciplinary system, however, is undergoing constant change.[225] It has shifted from a purely administrative system in its character to an almost judicial system. Nevertheless, this legislative policy appears to be far from stable. Certain gaps in legislative pronouncements should be cured. Further channels of appeal should be open to civil servants, and efficiency policy should be enhanced.

V. CONCLUSION

The Egyptian civil service system adheres principally to a judicial disciplinary pattern. The judicial elements in this system clearly outweigh the administrative ones. Disciplinary courts within the Council discharge disciplinary functions as if they were administrative authorities. Serious official offenses must be directly challenged before respective disciplinary courts. The concerned administrative authority has no power to impose serious disciplinary penalties.

Furthermore, investigation of financial as well as important official offenses and accusations against high ranking officials must be discharged by an independent semi-judicial authority. The Administrative Deputy Agency, through its staff, is entrusted with this burden.[226]

Prosecution before disciplinary courts is the exclusive duty of the agency. Such serious penalties can be reviewed only before the High Administrative Court.[227] These penalties may include demotion in salary, demotion in grade, demotion in both grade and salary, discharge from office, and dismissal.[228] Lesser penalties may be imposed by the accused official's superior. These penalties may be reviewed by the superior's supervisor. The latter's decision may also be reviewed by the respective disciplinary court. A court's decision may be reviewed on appeal before the High Administrative Court.

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225. IZZAT, *supra* note 64; HANBAL, *supra* note 128.

226. *See supra* text accompanying notes 134-36.

227. *See supra* text accompanying notes 153-54.

228. *Id.*

The existing disciplinary structure abounds with complexity. It may also involve further expense to the state. Delay in handling disciplinary issues is one of its characteristics. Public administration authorities are not firmly involved in disciplinary proceedings. Civil servants, also, need further protection. Officials accused with serious offenses must be given more than one channel for redress. The role of the Central Agency for Management and Administration should be strengthened so that its authority extends beyond matters of formality to civil service matters of substance.

Administrative authorities should be allowed disciplinary powers concerning their subordinates. Their disciplinary powers must be carried out under the supervision of the administrative courts of the Council. Investigation should be discharged, not by an independent semi-judicial agency established especially for this purpose, but by neutral administrative authorities within the structure of the civil service. Disciplinary councils for officials of different categories should be established to review disciplinary actions imposed by officials' superiors. The council's decisions should be reviewed by the Central Agency. These suggestions will not undermine the supervisory role of the Council of the State. Its jurisdiction remains intact. However, penalty decisions will be imposed by administrative authorities under the supervisory role of the Council. Duplication, overlapping, and complexity will be replaced, as a consequence, by clarity, simplicity, and efficiency. Fairness to public employees will be maintained through additional channels of appeal and through the Council's supervisory role.